

VALENTI LAW APC

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHONNA COUNTER,

Plaintiff,

vs.

EXER MEDICAL CORPORATION;
EAST PACIFIC PROPERTIES LLC
and DOES 1-10,

Defendants.

Case No.:

COMPLAINT FOR:

DENIAL OF CIVIL RIGHTS AND
ACCESS TO PUBLIC FACILITIES
TO PHYSICALLY DISABLED
PERSONS IN VIOLATION OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, (42 U.S.C. §12101, *et*
seq.) AND THE UNRUH CIVIL
RIGHTS ACT, (CALIFORNIA CIVIL
CODE §51, *et seq.*)

DEMAND FOR JURY TRIAL

“[T]he continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.” 42 U.S.C. §12101(a)(8).

Plaintiff SHONNA COUNTER (hereinafter referred to as “Plaintiff”) complains of EXER MEDICAL CORPORATION, a California corporation dba EXER URGENT CARE; EAST PACIFIC PROPERTIES LLC, a Delaware limited liability company; and DOES 1-10, (each, individually a “Defendant” and collectively “Defendants”) and alleges as follows:

I. PARTIES

1. Plaintiff SHONNA COUNTER is a California resident and a qualified physically disabled person. Plaintiff has Spinal Muscular Atrophy, a rare, recessive, progressive, degenerative neuromuscular disorder. This condition weakens her muscle strength significantly, limiting or impairing her ability to walk. She uses a powered wheelchair for mobility and is a member of a protected class of individuals guaranteed rights under state and federal law. Ms. Counter prides herself on her independence and on empowering other disabled people to be independent. Plaintiff is member of a protected class of individuals guaranteed rights under state and federal law.

2. Defendants EXER MEDICAL CORPORATION, EAST PACIFIC PROPERTIES LLC, and DOES 1-10 are and were the owners, operators, lessors and/or lessees of the subject business, property, and facility at all times relevant in this Complaint.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their

1 relative responsibilities in causing the access violations herein complained of, and
2 alleges a joint venture and common enterprise by all such Defendants. Plaintiff is
3 informed and believes that each of the Defendants herein, including DOES 1
4 through 10, inclusive, is responsible in some capacity for the events herein alleged,
5 or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to
6 amend when the true names, capacities, connections, and responsibilities of the
7 Defendants and Does 1 through 10, inclusive, are ascertained.

8 4. Defendants own and owned the property located at 2300 Wilshire
9 Blvd Ste. 104, Santa Monica, CA 90403 (“Subject Property”) at all relevant times.

10 5. Defendants operate and operated an medical office doing business as
11 EXER URGENT CARE (“medical office”), located at the Subject Property, at all
12 relevant times.

13 6. Plaintiff alleges that the Defendants have been and are the owners,
14 franchisees, lessees, general partners, limited partners, agents, trustees, employees,
15 subsidiaries, partner companies and/or joint ventures of each of the other
16 Defendants, and performed all acts and omissions stated herein within the course
17 and scope of such relationships causing the damages complained of herein.

18 **II. JURISDICTION AND VENUE**

19 7. This Court has subject matter jurisdiction over this action pursuant to
20 28 U.S.C. §1331 and §1343(a)(3) and (a)(4) for violations of the Americans with
21 Disabilities Act of 1990, U.S.C. §12101, *et seq.*

22 8. Pursuant to supplemental jurisdiction, an attendant and related cause
23 of action, arising out of the same nucleus of operative facts and arising out of the
24 same transactions, is also brought under California’s Unruh Civil Rights Act,
25 which expressly incorporates the Americans with Disabilities Act.

26 9. Venue is proper in this court pursuant to 28 U.S.C. U.S.C. §1391(b)
27 and is founded on the fact that the real property which is the subject of this action
28 is located in this district and that Plaintiff’s causes of action arose in this district.

III. FACTS

10. Plaintiff uses a wheelchair for mobility.

11. Defendants' business is open to the public, a place of public accommodation, and a business establishment.

12. Plaintiff went to the medical office on June 17, 2024, for urgent medical treatment.

13. Unfortunately, during Plaintiff's visit, Defendants did not offer persons with disabilities equivalent facilities, privileges, advantages, and accommodations offered to other persons.

14. Plaintiff encountered barriers that interfered with and denied Plaintiff the ability to use and enjoy the goods, services, privileges, advantages, and accommodations offered by Defendants at the Subject Property.

15. These barriers violate one or more standards of the Americans with Disabilities Act ("2010 ADA") and/or the California Building Codes ("2022 CBC").

16. Defendants did not provide an accessible transaction counter for use with persons in wheelchairs like Plaintiff. Transaction counters for patrons visiting the store are among the facilities, privileges advantages, and accommodations offered by Defendants. When a business provides facilities such as a sales or transaction counter, it must provide an accessible sales or transaction counter. 2010 ADA §904.4, 2010 ADA §904.4.1; 2022 CBC 11B-904.4, 2022 CBC 904.4.1.

17. The medical office has a sales counter where it handles its transactions with patients upon arrival. However, Defendants failed to provide an accessible transaction counter. The counter is more than 36 inches in height. There is no lowered, 36-inch portion of the sales counter for use by persons in wheelchairs to conduct transactions. Plaintiff arrived at the medical office and approached the transaction counter to check in. Neither she nor the receptionist

1 could see each other. Plaintiff had to strain her neck in order to communicate. The
2 receptionist did not stand to greet or interact with Plaintiff.

3 18. The route to the medical office's restroom is also not accessible, as it
4 contains obstructions which narrow the path of travel and reduce available turning
5 space. The area in front of the restroom door is obstructed and has insufficient
6 turning space. Defendants store medical equipment next to the exam area's unisex
7 bathroom. This blocks the path of travel for persons using a wheelchair and
8 provides for less than the required 36 inches of space. Plaintiff's wheelchair got
9 tangled in the medical equipment and she dragged medical equipment behind her
10 as she attempted to turn and enter the bathroom. Upon realizing she was dragging
11 equipment with her she stopped, backed up, and was able to disentangle her chair
12 from the equipment. When she returned from the bathroom the medical equipment
13 was still blocking the path of travel. Plaintiff had to drive her chair into the
14 equipment to try and move it to the side of the wall so she could pass. 2010 ADA
15 §206; 2010 ADA §304; 2010 ADA §305; 2010 ADA §404; 2022 CBC 11B-206;
16 2022 CBC 11B-304; 2022 CBC 11B-305; 2022 CBC 11B-404.

17 19. None of the examination room tables are accessible to a person in a
18 wheelchair. When Plaintiff asked for an accessible table she was told there were
19 none. She was then told to get up on the table. Plaintiff had to explain that due to
20 her disability she was unable to transfer herself from her wheelchair onto the table
21 unless it was lowered. Plaintiff was never offered assistance, and was forced to
22 remain in her chair during her visit with medical staff, potentially impacting the
23 quality of her medical care.

24 20. The examination room did not have enough space for Plaintiff to
25 maneuver her wheelchair. Even if Plaintiff was able to transfer to the table the lack
26 of space would have denied her a side approach to the exam table. 2022 CBC 11B-
27 223.4; 2022 CBC 11B-805.4.
28

21. The photos below show one or more of these violations.



1 22. The barriers existed during Plaintiff's visit to the Subject Property.
2 Plaintiff personally encountered these barriers.

3 23. These inaccessible conditions and barriers denied Plaintiff full and
4 equal access and caused her difficulty, discomfort, and embarrassment. Because of
5 a lack of a compliant check-in-counter Plaintiff was forced to strain her neck to
6 speak with the receptionist. She could not be seen by the receptionist and felt
7 degraded that the receptionist did bother to stand so they could make eye contact
8 and see one another clearly. She also may have received lesser quality medical care
9 because of the difficulty communicating properly. Because of the lack of a
10 compliant path of travel to the bathroom, Plaintiff had difficulty entering the
11 bathroom and required to stop and remove the medical equipment her wheelchair
12 was dragging behind her. This was both frustrating and embarrassing for her. She
13 also had to encounter this barrier a second time when she was finished using the
14 restroom. Because of the lack of a compliant examination room, Plaintiff was
15 unable to receive as thorough an exam as she could have if she were able to
16 transfer to the table. This was frustrating and disappointing for Plaintiff, in addition
17 to potentially impacting the quality of her medical care.

18 24. These barriers denied Plaintiff full and equal access due to her
19 disability because, *inter alia*, they caused Plaintiff anxiety, difficulty, discomfort,
20 and embarrassment which patrons who do not use a wheelchair for mobility do not
21 suffer when they access the Subject Property.

22 25. Plaintiff intends to return to the Subject Property in the near future.
23 Plaintiff is currently deterred from returning because of the knowledge of the
24 barriers to equal access that relate to Plaintiff's disabilities which continue to exist
25 at Defendants' public accommodation facilities. Plaintiff is proud to be an ADA
26 tester who engages in the "necessary and desirable" task of bringing serial lawsuits
27 in order to ensure that the accessibility standards of Title III of the ADA are
28 enforced. (The Ninth Circuit has repeatedly commented that "it may be necessary

1 and desirable for committed individuals to bring serial litigation advancing the
2 time when public accommodations will be compliant with the ADA. . . .[A] system
3 that relies on private attorneys general should respect and value the work done by
4 those who take up the mantle . . . rather than expecting every disabled person to
5 use whatever spare time and energy they have to litigate each trip to the movies.”
6 *Langer v. Kiser*, 57 F.4th 1085, 1095, 1099 (9th Cir. 2023) (citations omitted)).

7 26. Plaintiff alleges that Defendants knew that the barriers prevented
8 equal access. Plaintiff further alleges that Defendants had actual or constructive
9 knowledge that the architectural barriers prevented equal access, and that the
10 noncompliance with the Americans with Disabilities Act and Title 24 of the
11 California Building Code regarding accessible features was intentional.

12 27. Defendants have obstructed or failed to maintain, in working and
13 useable conditions, those features necessary to provide ready access to persons
14 with disabilities. “A public accommodation shall maintain in operable working
15 condition those features of facilities and equipment that are required to be readily
16 accessible to and usable by persons with disabilities.” 28 C.F.R. §36.211(a); 2022
17 CBC 11B-108.

18 28. The State of California Department of General Servicers, Division of
19 the State Architect (DSA) provides commentary to 2022 CBC 11B-108 as follows:

20 Features for accessibility must be permanently functional, unobstructed
21 and may not be removed. It is not sufficient to provide features such as
22 accessible routes, parking, elevators, ramps or signage if those features
23 are not maintained in a manner that enables individuals with disabilities
to use them.

24 DSA, 2019 California Access Compliance Advisory Reference Manual, p.84.

25 29. Defendants have the financial resources to remove these barriers
26 without much expense or difficulty in order to make their property more accessible
27 to their mobility impaired customers. The United States Department of Justice has
28 identified that these types of barriers are readily achievable to remove.

1 disabilities have been precluded from doing so because of discrimination...in such
2 critical areas as employment, housing, public accommodations, education,
3 transportation, communication, recreation, institutionalization, health services,
4 voting, and access to public services.” 42 U.S.C. §12101(a).

5 35. In 1990 Congress also found that “the Nation’s proper goals regarding
6 individuals with disabilities are to assure equality of opportunity, full participation,
7 independent living, and economic self-sufficiency for such individuals,” but that
8 “the continuing existence of unfair and unnecessary discrimination and prejudice
9 denies people with disabilities the opportunity to compete on an equal basis and to
10 pursue those opportunities for which our free society is justifiably famous.” 42
11 U.S.C. §12101(a).

12 36. In passing the Americans with Disabilities Act of 1990, which was
13 signed into law by President George H. W. Bush on July 26, 1990 (hereinafter the
14 “ADA”), Congress stated as its purpose:

15 “It is the purpose of this Act

16 (1) to provide a clear and comprehensive national mandate for the
17 elimination of discrimination against individuals with disabilities;

18 (2) to provide clear, strong, consistent, enforceable standards
19 addressing discrimination against individuals with disabilities;

20 (3) to ensure that the Federal Government plays a central role in
21 enforcing the standards established in this Act on behalf of individuals
22 with disabilities; and

23 (4) to invoke the sweep of congressional authority, including the power
24 to enforce the fourteenth amendment and to regulate commerce, in
25 order to address the major areas of discrimination faced day to-day by
26 people with disabilities.”

27 42 USC §12101(b).
28

1 37. As part of the ADA, Congress passed “Title III – Public
2 Accommodations and Services Operated by Private Entities” (42 U.S.C. §12181 *et*
3 *seq.*). Title III of the ADA prohibits discrimination against any person “on the
4 basis of disability in the full and equal enjoyment of the goods, services, facilities,
5 privileges, advantages, or accommodations of any place of public accommodation
6 by any person who owns, leases (or leases to), or operates a place of public
7 accommodation.” 42 U.S.C. §12182(a).

8 38. The specific prohibitions against discrimination include, *inter alia*, the
9 following:

- 10 • 42 U.S.C. §12182(b)(1)(A)(ii): “Participation in Unequal Benefit. - It
11 shall be discriminatory to afford an individual or class of individuals,
12 on the basis of a disability or disabilities of such individual or class,
13 directly, or through contractual, licensing, or other arrangements, with
14 the opportunity to participate in or benefit from a good, service, facility,
15 privilege, advantage, or accommodation that is not equal to that
16 afforded to other individuals.”
- 17 • 42 U.S.C. §12182(b)(2)(A)(ii): “a failure to make reasonable
18 modifications in policies, practices, or procedures when such
19 modifications are necessary to afford such goods, services, facilities,
20 privileges, advantages, or accommodations to individuals with
21 disabilities...;”
- 22 • 42 U.S.C. §12182(b)(2)(A)(iii): “a failure to take such steps as may be
23 necessary to ensure that no individual with a disability is excluded,
24 denied service, segregated, or otherwise treated differently than other
25 individuals because of the absence of auxiliary aids and services...;”
- 26 • 42 U.S.C. §12182(b)(2)(A)(iv): “a failure to remove architectural
27 barriers, and communication barriers that are structural in nature, in
28 existing facilities... where such removal is readily achievable;”
- 42 U.S.C. §12182(b)(2)(A)(v): “where an entity can demonstrate that
the removal of a barrier under clause (iv) is not readily achievable, a
failure to make such goods, services, facilities, privileges, advantages,

1 or accommodations available through alternative methods if such
2 methods are readily achievable.”

3 39. Plaintiff is a qualified individual with a disability as defined in the
4 Rehabilitation Act and in the Americans with Disabilities Act of 1990.

5 40. The acts and omissions of Defendants set forth herein were in
6 violation of Plaintiff’s rights under the ADA and the regulations promulgated
7 thereunder, 28 C.F.R. Part 36 *et seq.*

8 41. The removal of each of the physical and policy barriers complained of
9 by Plaintiff as hereinabove alleged, were at all times herein mentioned “readily
10 achievable” under the standards of §12181 and §12182 of the ADA. Removal of
11 each and every one of the architectural and/or policy barriers complained of herein
12 was already required under California law. Further, on information and belief,
13 alterations, structural repairs or additions since January 26, 1993, have also
14 independently triggered requirements for removal of barriers to access for disabled
15 persons per §12183 of the ADA. In the event that removal of any barrier is found
16 to be “not readily achievable,” Defendants still violated the ADA, per
17 §12182(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages
18 and accommodations through alternative methods that were “readily achievable.”

19 42. On information and belief, as of the date of Plaintiff’s encounter at the
20 premises and as of the filing of this Complaint, Defendants’ actions, policies, and
21 physical premises have denied and continue to deny full and equal access to
22 Plaintiff and to other mobility disabled persons in other respects, which violate
23 Plaintiff’s right to full and equal access and which discriminate against Plaintiff on
24 the basis of her disabilities, thus wrongfully denying to Plaintiff the full and equal
25 enjoyment of the goods, services, facilities, privileges, advantages and
26 accommodations, in violation of 42 U.S.C. §12182 and §12183 of the ADA.
27
28

1 43. Defendants' actions continue to deny Plaintiff's rights to full and
2 equal access and discriminated and continue to discriminate against her on the
3 basis of her disabilities, thus wrongfully denying to Plaintiff the full and equal
4 enjoyment of Defendants' goods, services, facilities, privileges, advantages and
5 accommodations, in violation of the ADA, 42 U.S.C. §12182.

6 44. Further, each and every violation of the Americans With Disabilities
7 Act of 1990 also constitutes a separate and distinct violation of California Civil
8 Code §51(f), §52, §54(c) and §54.1(d), thus independently justifying an award of
9 damages and injunctive relief pursuant to California law, including but not limited
10 to Civil Code §54.3 and §55.

11 **SECOND CAUSE OF ACTION**

12 Violation of the Unruh Civil Rights Act

13 (California Civil Code §51, *et seq.*)

14 (Against All Defendants)

15 45. Plaintiff alleges and incorporates by reference, as if fully set forth
16 again herein, each and every allegation contained in all prior paragraphs of this
17 complaint.

18 46. California Civil Code §51 provides that physically disabled persons
19 are free and equal citizens of the state, regardless of their medical condition or
20 disability:

21 All persons within the jurisdiction of this state are free and equal, and
22 no matter what their sex, race, color, religion, ancestry, national origin,
23 **disability, or medical condition** are entitled to full and equal
24 accommodations, advantages, facilities, privileges, or services in all
25 business establishments of every kind whatsoever.

25 California Civil Code §51(b) (emphasis added).

26 47. California Civil Code §51.5 also states, in part: "No business,
27 establishment of any kind whatsoever shall discriminate against...any person in
28 this state on account" of their disability.

1 48. California Civil Code §51(f) specifically incorporates (by reference)
2 an individual's rights under the ADA into the Unruh Act.

3 49. California Civil Code §52 provides that the discrimination by
4 Defendants against Plaintiff on the basis of her disability constitutes a violation of
5 the general antidiscrimination provisions of §51 and §52.

6 50. Each of Defendants' discriminatory acts or omissions constitutes a
7 separate and distinct violation of California Civil Code §52, which provides that:

8 Whoever denies, aids or incites a denial, or makes any discrimination
9 or distinction contrary to section 51, 51.5, or 51.6 is liable for each and
10 every offense for the actual damages, and any amount that may be
11 determined by a jury, or a court sitting without a jury, up to a maximum
12 of three times the amount of actual damage but in no case less than four
13 thousand dollars (\$4,000), and any attorney's fees that may be
14 determined by the court in addition thereto, suffered by any person
15 denied the rights provided in Section 51, 51.5, or 51.6.

16 51. Any violation of the Americans with Disabilities Act of 1990
17 constitutes a violation of California Civil Code §51(f), thus independently
18 justifying an award of damages and injunctive relief pursuant to California law,
19 including Civil Code §52. Per Civil Code §51(f), "A violation of the right of any
20 individual under the Americans with Disabilities Act of 1990 (Public Law 101-
21 336) shall also constitute a violation of this section."

22 52. The actions and omissions of Defendants as herein alleged constitute a
23 denial of access to and use of the described public facilities by physically disabled
24 persons within the meaning of California Civil Code §51 and §52.

25 53. The discriminatory denial of equal access to and use of the described
26 public facilities caused Plaintiff difficulty, discomfort, and embarrassment.

27 54. As a proximate result of Defendants' action and omissions,
28 Defendants have discriminated against Plaintiff in violation of Civil Code §51 and
§52, and are responsible for statutory, compensatory and actual damages to
Plaintiff, according to proof.

PRAYER FOR RELIEF

Plaintiff has no adequate remedy at law to redress the wrongs suffered as set forth in this Complaint. Plaintiff has suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of the Defendants as alleged herein, unless Plaintiff is granted the relief he requests. Plaintiff and Defendants have an actual controversy and opposing legal positions as to Defendants' violations of the laws of the United States and the State of California.

The need for relief is critical because the civil rights at issue are paramount under the laws of the United States of America and the State of California.

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as follows:

1. Issue a preliminary and permanent injunction directing Defendants as current owners, operators, lessors, and/or lessees of the Subject Property and premises to modify the above described property, premises, policies and related facilities to provide full and equal access to all persons, including persons with physical disabilities; and issue a preliminary and permanent injunction pursuant to ADA §12188(a) and state law directing Defendants to provide facilities and services usable by Plaintiff and similarly situated persons with disabilities, and which provide full and equal access, as required by law, and to maintain such accessible facilities once they are provided; to cease any discriminatory policies; and to train Defendants' employees and agents how to recognize disabled persons and accommodate their rights and needs;

2. Retain jurisdiction over the Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, and maintenance of physically inaccessible public

1 facilities and policies as complained of herein no longer occur, and
2 cannot recur;

3 3. Award to Plaintiff all appropriate damages, including but
4 not limited to actual and statutory damages according to proof;

5 4. Award to Plaintiff all reasonable attorney fees, litigation
6 expenses, and costs of this proceeding pursuant to 42 U.S.C §12205 and
7 California Civil Code §52; and

8 5. Grant such other and further relief as this Court may deem
9 just and proper.

10
11 DATED: December 30, 2024

VALENTI LAW APC

12
13 By: /s/ Matthew D. Valenti

14 Matthew D. Valenti
15 Attorney for Plaintiff
16 Shonna Counter
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JURY DEMAND

Plaintiff hereby demands a trial by jury for all claims and issues for which a jury is permitted.

DATED: December 30, 2024

VALENTI LAW APC

By: /s/ Matthew D. Valenti

Matthew D. Valenti
Attorney for Plaintiff
Shonna Counter